

FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463

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FIRST GENERAL COUNSEL'S REPORT

SENSITIVE

MUR: 4646
DATE COMPLAINT FILED: 6/18/97
DATE OF NOTIFICATION: 6/24/97
DATE ACTIVATED: 1/16/98

STAFF MEMBER: J. Michael Lehmann

COMPLAINANTS: Scott P. Lewis and Carol J. Lewis

RESPONDENTS: Amy Robin Habie
David Boies
Wallace Walker
Rhea Weil
Lawrence Herman
Carol J. Lewis
Friends of Jane Harman and Jacki Bacharach, as treasurer
Kennedy for Senate 2000 and John F. Zamparelli, as treasurer

RELEVANT STATUTES: 2 U.S.C. § 441a(a)(1)(A)
2 U.S.C. § 441f
11 C.F.R. § 103.3(b)(2)

INTERNAL REPORTS CHECKED: Disclosure Reports

FEDERAL AGENCIES CHECKED: None

I. GENERATION OF MATTER

This matter arises from a complaint filed with the Federal Election Commission (hereinafter the "Commission") on June 18, 1997. Complainants Scott Lewis and Carol Lewis' submission indicates that Mrs. Lewis, as well as others, acted as a straw donor for contributions in the name of another to Friends of Jane Harman. Complainants also allege that respondents made similar contributions to Kennedy for Senate 2000.

Respondents were notified of the complaint on June 24, 1997. David Boies responded to the complaint on July 18, 1997. Friends of Jane Harman and its treasurer, Jacki Bacharach, (hereinafter collectively referred to in the singular as "Harman") responded to the complaint on July 25, 1997. Kennedy for Senate 2000 and its treasurer, John F. Zamparelli, (hereinafter collectively referred to in the singular as "Kennedy") responded to the complaint on July 31, 1997. Amy Robin Habie, Wallace Walker, Rhea Weil and Lawrence Herman submitted letters indicating their interest in conciliation, but failed to file anything responding to the specific allegations in the complaint.

II. FACTUAL AND LEGAL ANALYSIS

A. Law

The Federal Election Campaign Act of 1971, as amended ("the Act"), sets limits on the amount of money that an individual may contribute to a candidate or authorized political committee. 2 U.S.C. § 441a(a)(1)(A) The Act also prohibits candidates and political committees, as well as officers and employees of a political committee, from knowingly accepting any contribution in violation of the provisions of the section. 2 U.S.C. § 441a(f).

The Act prohibits persons from making contributions in someone else's name, allowing one's name to be used for such a contribution, knowingly accepting contributions made in the name of another or knowingly assisting either the making or accepting of a contribution in the name of another. 2 U.S.C. § 441f. See also 11 C.F.R. § 110.4(b)(1)

Lastly, where a political committee accepts an apparently legal contribution and "later discovers that it is illegal based on new evidence not available at the time of receipt and deposit,

the treasurer shall refund the contribution to the contributor within thirty days of the date on which the illegality is discovered." 11 C.F.R. § 103.3(b)(2).

B. Complaint

The complaint consists of a letter from Scott Lewis, with affidavits from both Scott and Carol Lewis attached. The entirety of Carol Lewis' affidavit is as follows:

In May 1996, my client, Amy Robin Habie of Boca Raton, Florida asked me to make a \$1,000 political contribution to the campaign of U.S. Representative Jane Harmon [sp] (D., Calif.) on behalf of her friend, attorney David Boies of the Cravath, Swaine & Moore law firm in New York City. Ms. Habie gave [sp] me a \$1,000 check drawn on her personal account in exchange for my \$1,000.00 check to Rep. Jane Harmon's [sp] campaign. Ms. Habie told me that David Boies made tens of thousands of dollars of such contributions to different congressmen annually and that she helped him in doing so by enlisting the aid of her relatives, friends, and business associates, as she was doing with me. She said that Senator Kennedy also received such donations from Mr. Boies.

In his affidavit, Scott Lewis indicates that on June 2, 1997, he contacted Representative Harman's California office and spoke with a member of her staff about his wife's contribution. At his request, the staff member read to him the names of other Florida contributors who gave \$1,000 to Harman in 1996. In addition to Habie, Lewis recognized the names of the following respondents: Wallace Walker (Habie's secretary),¹ Rhea Weil (Habie's mother) and Lawrence Herman (Weil's husband).²

¹ At the time of her contribution, Carol Lewis was Habie's bookkeeper.

² On July 3, 1997, complainants sent the Commission a letter, along with a newspaper article and a pleading from unrelated litigation involving complainants and two of the respondents. Complainants state that because Habie and Boies have a particularly close relationship, "it is possible that he did not reimburse her directly for recruiting 'straw donors.'" Complainants also assert that they "have reason to believe that their [Boies and Habie's] use of straw donors has taken place over a number of years and continued through this year" and request "the lists of \$1,000 donors to Rep. Harmon's [sp] and Sen. Kennedy's campaigns for 1993-97 along with the dates that checks were deposited" Finally, complainants point out that Habie has testified that she "went to California in May" of 1996 and that all of the contributions to Harman occurred at that time.

C. The Responses

I. David Boies

Boies' response (1) questions complainants' motives and credibility,³ (2) points out that the only allegation regarding him involves a statement Habie allegedly made, and (3) argues that even if that statement were made, there is no indication that he violated FECA or was even aware of any violations. Boies states that the relevant facts are as follows: he asked Habie if she would be willing to contribute to Harman and solicit contributions from others; Habie agreed to do so; Boies never informed Habie that he makes tens of thousands of contributions annually; and Habie never informed him that the contributions she raised were anything other than personal, voluntary contributions from those individuals.

Attached to Boies' submission is an affidavit from Habie.⁴ Habie states that (1) Boies asked her to contribute to Harman and (2) based on Boies' previous statements about Harman, Habie said she would be willing to do so and would also ask others to contribute. As for her alleged participation in a Section 441f scheme, Habie states as follows:

Mr. Boies told me that Congresswoman Harmon [sp] could not accept more than \$1,000 or \$2,000 from any one contributor. At that time I did not understand that this was a legal requirement but believed that this was a requirement that Congresswoman Harmon had set for her own purposes. Thinking back I cannot pinpoint exactly why I believed what I believed, but I think it was because I did not know any legal requirement for limiting contributions to \$1,000 or \$2,000. Indeed, I can remember seeing articles about much larger contributions by wealthy individuals without any indication that such contributions were illegal.

³ Specifically, Boies notes (1) that he represents Habie and her firm in litigation with complainants, including a RICO allegation against complainants, (2) that complainants have admitted to tax evasion and (3) that Scott Lewis has threatened to "make trouble" for Boies if he continues to represent Habie.

⁴ For the Commission's convenience, Habie's affidavit is also attached to this report. See Attachment 1.

3. Candidate Committees

Respondent Kennedy points to a lack of specific information regarding contributions to Kennedy and asserts that the complaint "provides no legal or factual basis to support this allegation." (July 31, 1997 from William C. Oldaker, p. 1.) Respondent Harman states that "[w]e have reviewed the allegations and have no information relevant or useful to any inquiry the Commission may choose to make." (July 25, 1997 letter from Judith L. Corley, p. 1)

D. Analysis

None of the Florida respondents (Lewis, Habie, Walker, Herman, Weil) have denied that they were involved in a Section 441f scheme, either as the real contributor making excessive donations (Habie) or as straw donors (Lewis, Walker, Herman, Weil). In addition to Lewis' affidavit, Habie's affidavit contains a paragraph which appears to address the issue of whether her violation was knowing and willful. See Attachment 1, ¶ 6. Presumably, such an explanation by a respondent of why she (allegedly) misunderstood the relevant contribution limits would be irrelevant absent the making of excessive contributions, and, in this case, making those excessive contributions through a Section 441f scheme.

In addition to the materials provided by complainants and respondents, this Office has reviewed the relevant disclosure materials for the 1995-1996 election cycle. These reports indicate that each individual respondent (with the exception of complainant/respondent Carol Lewis, who only gave to Harman) contributed \$1,000 to Harman and \$1,000 to Kennedy. All of the Florida respondents' contributions to Harman were reportedly received on May 23, 1996. Given her testimony that she was in California in May 1996, see supra pp. 3-4, n. 2, it can be inferred that Habie personally delivered all five contributions while in California.

(Attachment 1, ¶ 6.) Finally, Habie's affidavit (1) opines that Boies believed that all of the contributions at issue were legitimate and (2) denies that she stated that Boies regularly makes contributions in the name of another. The affidavit fails to address the alleged straw contributions to Kennedy.

2. Other Individual Respondents

Respondents Amy Robin Habie and Wallace Walker, through counsel, submitted a response requesting information regarding the Commission's conciliation process so that they "may avoid filings and hearings and may bring this matter to an early conclusion without the parties expending time, money and energies defending themselves." (July 24, 1997 letter from Jeffrey E. Wasserman, Esq.) Upon receiving this response, this Office sent counsel a letter (1) informing him that the Commission would take no action on the complaint (including seeking conciliation) unless and until the Commission found that there was reason to believe that the Act had been violated and (2) reminding him that his clients could respond substantively to the complaint. Habie and Walker filed nothing further with the Commission.

Respondents Rhea Weil and Lawrence Herman filed a response in which they indicated that they contributed at Habie's request and that they would be interested in conciliation. (July 24, 1997 letter from Rhea Weil Herman and Lawrence Herman) ("If anything further is going to happen with this, we were told that there is a procedure of conciliation, and this is how we would like to proceed, if it is necessary at all.") None of the four individual respondents addressed the factual allegations that they were involved in a Section 441f scheme.

The evidence as to the Kennedy contributions is less clear. The contributions from Habie and Walker were both accepted on the same day, March 13, 1996. However, Weil's contribution was reportedly received on May 25, 1995; Herman's contribution was reportedly received on December 11, 1995. Thus, both Weil's and Herman's contributions were not only accepted on different days than Habie's, they were reportedly received prior to Habie's contribution. On the other hand, in addition to Lewis' affidavit, according to the public record, see infra p. 8, n. 6, the alleged straw donors (Lewis, Walker, Herman, and Weil) -- who made \$1,000 contributions to candidates in distant states (California and Massachusetts) -- have made no contributions to candidates for Federal office in Florida. See e.g. MUR 4235 (Alaska Interstate Construction, Inc.) (straw donors' lack of political sophistication or previous contributions part of evidence that \$1,000 contributions not made with personal funds).

Given (1) Lewis' affidavit indicating that Habie asked her to make a contribution and reimbursed her for doing so, (2) the circumstances (e.g., the timing) surrounding the Florida respondents' contributions to a candidate for Congress in California and a candidate for Senate in Massachusetts,⁵ (3) Habie's implicit admission, in her affidavit, that she made excessive contributions, and (4) the absence of evidence contradicting the substance of Lewis' allegations regarding the Florida respondents; there is reason to believe that the Florida respondents may have violated the Act.⁶

⁵The reports indicate that both Harman and Kennedy received contributions from a "Wallace V. Walker" of Boca Raton, Florida. According to Wallace's attorney, respondent's complete name is "Wallace Walker." It is undisputed that respondent Walker is the person referred to in the reports. This failure to properly identify respondent Wallace regarding both contributions would also seem to be a further indication that Walker's contributions may have been contributions in the (inaccurate) name of another

⁶As for complainants' suggestion in their July 3 letter that Boies and Habie have been engaging in similar Section 441f schemes for years, this Office has conducted a contributor search for the

As for whether her apparent violations of the Act were knowing and willful, Habie, in her affidavit, explains that she understood that there was a limit to how much she could contribute to Harman, but was under the mistaken impression "that this was a requirement that Congresswoman Harmon [sp] had set for her own purposes." (Attachment 1, ¶ 6.) First, while Habie's explanation (if true) could explain why she was unaware that her contributions to Harman exceeded the Act's monetary limits, it does not explain why Habie was so intent on making those excess contributions (in violation of a candidate's self-imposed limits) that she directed straw donors to make contributions (in their own name) for which she reimbursed them. Second, Habie's explanation does not address the excessive contributions (through straw donors) that she apparently made to Kennedy, which were made before the contributions to Harman. Because of these questions about Habie's explanation as to why she made excessive contributions through straw donors, there is reason to believe that Habie may have engaged in knowing and willful violations of the Act.

Based on all of the information set forth above, this Office recommends that the Commission find reason to believe that Amy Robin Habie knowingly and willfully violated 2 U.S.C. § 441f by making contributions in the name of another, and that Carol Lewis, Wallace Walker, Rhea Weil and Lawrence Herman may have violated 2 U.S.C. § 441f by knowingly allowing their names to be used to effect a contribution in the name of another.

1991-1992, 1993-1994, and the 1997-1998 election cycles. In the 1991-1992 cycle, only respondent Boies made contributions. In the 1993-1994 cycle, Boies again made several contributions, including ones to Harman and Kennedy for Senate 1994. Habie, for her part, contributed \$2,000 to Kennedy for Senate 1994. None of the alleged straw donors made any other contributions. Lastly, none of the individual respondents has made any contributions in the present election cycle.

In addition, this Office recommends that the Commission find reason to believe that Amy Robin Habie knowingly and willfully violated 2 U.S.C. § 441a(a)(1)(A) by contributing in excess of the Act's monetary limits.

Because of the absence of evidence other than the statement respondent Habie allegedly made about respondent Boies' role in the Section 441f schemes, this Office recommends taking no action as to Boies at this point.

None of the information presently available indicates that either Harman or Kennedy knowingly accepted contributions in the name of another or knowingly accepted contributions in excess of the monetary limits. However, given the possibility that an investigation will bring to light additional facts regarding either Harman or Kennedy, this Office believes that it would be premature to close the file as to these respondents until it has a more complete understanding of the facts and recommends taking no action as to them at this point.

Though four (Habie, Walker, Herman, Weil) of the five Florida respondents have requested conciliation, questions remain regarding the contributions to Kennedy and the state of Habie's knowledge of the Act prior to her apparent violations of it. This Office believes that any investigation in this matter will be brief, and may not require formal discovery. As three of the five Florida respondents have failed to provide *any* substantive information about the contributions at issue, this Office plans to contact respondents to discuss the matter after they have received notification -- including fairly detailed Factual and Legal Analyses -- that the Commission has found reason to believe that they violated the Act. It is hoped that such communications with respondents -- after they have been fully apprised of the factual and legal bases for believing that they violated the Act -- will fully satisfy this Office that it is in possession

of all of the relevant facts regarding the contributions at issue, and, therefore, is in a position to recommend entering into conciliation with respondents so as to quickly resolve this matter.⁷

IV. RECOMMENDATIONS

1. Find reason to believe that Amy Robin Habie knowingly and wilfully violated 2 U.S.C. § 441f and 2 U.S.C. § 441a(a)(1)(A).
2. Take no action at this time against David Boies.
3. Find reason to believe that Carol J. Lewis, Wallace Walker, Rhea Weil and Lawrence Herman violated 2 U.S.C. § 441f.
4. Take no action at this time against Friends of Jane Harman and Jacki Bacharach, as treasurer.
5. Take no action at this time against Kennedy for Senate 2000 and John F. Zamparelli, as treasurer.

⁷ Both the complaint and a later letter mistakenly indicate that this Office had agreed "that by coming forward . . . [Mrs. Lewis] will not be pursued with charges." See Complaint, p. 1. See also Attachment 2, July 3 letter from Carol J. Lewis. In fact, this Office had made no such promise to complainants, and contacted complainants to inform them that this is the case. See Attachment 3, June 18, 1997 Memorandum for Record from F. Andrew Turley.


6. Approve the attached Factual and Legal Analyses.
7. Approve the appropriate letters.

Lawrence M. Noble
General Counsel

Date

4/22/98

BY:


Lois G. Lerner
Associate General Counsel

Attachments:

1. Affidavit of Amy Robin Habie
2. July 3, 1997 letter from Carol J. Lewis (without enclosures)
3. June 18, 1997 Memorandum for Record from F. Andrew Turley
4. Factual and Legal Analyses (5)